

MARILYN J. NOVAK
COUNTY RECORDER
BY KH DEPUTY ✓

OFFICE OF
BENTON COUNTY RECORDER
BENTON COUNTY, MN
CERTIFIED TO BE FILED
AND/OR RECORDED ON

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BENTON COUNTY ORDINANCE NO. 373

WHEREAS, the Benton County Department of Development instituted proceedings to amend the Benton County Ordinance 185; and,

WHEREAS, on January 20, 2004 Notice of Public Hearing and intent to amend Benton County Ordinance was published in the official newspaper of the county; and,

WHEREAS, on February 5, 2004, the Benton County Planning Commission held a public hearing thereon and recommended same to the Benton County Board of Commissioners for approval and passage; and,

WHEREAS, on February 17, 2004, the Benton County Board of Commissioners held a public hearing and approved the proposed ordinance amendment; and,

NOW PURSUANT TO THE AUTHORITY VESTED BY MINNESOTA STATUTES SECTION 394.25, THE BENTON COUNTY BOARD OF COMMISSIONERS ORDAINS: that Sections of the Benton County Ordinance 185 be amended as follows:

Amend Section 3.2 the definition of Accessory Building, Residential to read as follows: a subordinate building in a Residential District the use of which is incidental to that of the dominant use of the principal building or land.

Amend Section 3.103 the definition of Lot of Record to read as follows: a platted lot or metes and bounds parcel which has been recorded in the office of the County Recorder prior to the adoption of the August 1, 1978 zoning map. Also includes parcels described in unrecorded contracts for deed if the contract was notarized prior to the adoption of the August 1, 1978 zoning map.

Amend Section 3.183 the definition of Structure to read as follows: any building or appurtenance, including decks, except aerial or underground utility lines, such as sewer, electric, telephone, telegraph, gas lines, towers, poles, and other supporting facilities. "Structure" does not include accessory buildings smaller than 120 square feet, improved driveways, sidewalks, or slabs.

Amend Accessory buildings in Section 7.1.11 Permitted Accessory Uses to read as follows:

DOD

Accessory buildings- Private garages, parking spaces, carports.

Delete paragraph (c) of Temporary Farm Dwellings from Section 7.1.22
Add to Section 7.1.23 - Temporary Dwelling for Supportive Care

Add to Section 7.2.22 -Temporary Dwelling for Supportive Care
Delete paragraph (c) of Temporary Farm Dwellings from Section 7.2.23

Add to Section 7.2A.22 -Temporary Dwelling for Supportive Care
Delete paragraph (c) of Temporary Farm Dwellings from Section 7.2A.23

Delete the second sentence in the paragraph under Section 7S8.1- Types of MUD's Permissible

Amend Section 9.12 Field Windbreak to read as follows:

No person shall remove or destroy any field windbreak or pine plantation, nor remove trees or stumps remaining after a field windbreak or pine plantation is destroyed by natural causes or any cause, in any zoning district of the county without first making an application for and obtaining a land use permit. No such permit shall be issued unless the land owner has erosion control plan meeting the standards and specifications contained in the Benton Soil and Water Conservation District Technical Guide, of which a copy is filed with the Benton County SCS District Office. No permit shall be required for the normal harvest of trees planted for harvesting, for ornamental or decorative purposes, or for the normal and necessary thinning of trees in a field windbreak or pine plantation.

Amend Section 10.2.2 subparagraph (3) to read as follows:

(3) At the time of submission of the preliminary plat, the applicant shall also submit a title opinion by a practicing attorney-at-law based upon an examination of an abstract of the records of the County Recorder or the Registrar of Titles for the lands included within the plat, and showing the title to be in the name of the owner or subdivider. The date of continuation of the abstract examined, or the date of the examination of the records, shall be within thirty (30) days of submission of the preliminary plat to the Department of Development. The owner or subdivider shown in the title opinion shall be the owner of record of the platted lands on the date of recording of the plat with the County Recorder or Registrar of Titles. Execution by all owners of any interest in the land, including any holders of a mortgage therein of the certificate required by Minnesota Statutes, and which certificate shall include an accurate legal description of any area to be dedicated for public use, and shall include a dedication to the County of sufficient easements to accommodate utility services in such form as shall be approved by the County Attorney.

Amend Section 10.4.2 Type of Street to read Principal instead of Major

Add a third paragraph to Section 10.5.0 Approval of Preliminary Plat to read as follows:

Preliminary plat approval by the County Board shall be considered null and void if the final plat is not submitted within one year. The Board may grant an extension in the case of a phased development in which only part of the preliminary plat is submitted for final

approval. The developer shall request an extension at the same time that the first phase is submitted for final plat approval. When an extension is granted by the Board, the final plat for all subsequent phases shall be subject to the official controls in effect at the time of final plat approval.

Amend Section 10.6.2 Park Land Dedication to read as follows:

10.6.2 Park Land Dedication

- A. All plats, including plats associated with planned unit developments, shall be subject to the park dedication requirements of this section. In all new subdivision plats, up to 10% (ten percent) of the gross area shall be set aside and dedicated by fee title or easement to Benton County for public recreation space.
- B. Definitions: the following terms, as used in this ordinance, shall have the following meaning:

Gross Area: Gross area shall include all land in the proposed subdivisions, including, but not limited to land designated as out lots, roads and rights of way, drainage and utility easement, and designated wetlands.

Public Recreation Space: An area dedicated to the public for recreational purposes and transferred by recorded deed to the County of Benton. Public recreation space shall not include those areas dedicated for streets, rights of way, easements, wetland preservation, drainage ponds and other non-recreational purposes.

Median Undeveloped Lot Value: The estimated median market value, as calculated by the County Assessor, of lots within the subdivision, immediately after final plat approval.

- C. Dedication Determination Procedure: The amount and location of lands to be dedicated shall be determined in the following manner:
1. Prior to the public hearing on the preliminary plat, the Department of Development shall forward a copy of the preliminary plat to the Benton County Park Director.
 2. The Park Director shall review the plat and forward a recommendation to the Park Commission for review, and a written recommendation shall be forwarded to the Department of Development Director.
 3. The Board of Commissioners and the Department of Development Director shall determine the amount and location of lands to be donated for park purposes, consistent with the standards set forth in M.S. 394.25., subd. 7.. This determination shall be made at the County Board's public hearing on the preliminary plat, at which time the developer may present evidence and be heard regarding the dedication requirement.
 4. In lieu of land dedication, the Board and Director may require a financial contribution pursuant to paragraph E.

D. Lands to be dedicated to Benton County as public recreational space shall meet at least one of the following criteria:

1. The land is adjacent to existing public land used for recreational purposes consistent with the County's recreational needs.
2. The land would extend an existing or proposed trail system.
3. The land is of sufficient size and appropriate nature to maintain a recreational area.
4. The soils should be suitable for construction of active recreation facilities (Picnic Shelters, playground equipment, etc.).
5. The proposed park should be located in an area that is readily accessible by the road system, can support adequate park space, and can serve both the subdivision and other county citizens using the park system.
6. Provide an opportunity for habitat restoration to support a natural resource based park system.

In addition to the above criteria, land dedicated shall as much as possible extend and protect sensitive areas, including but not limited to: historically significant sites, environmentally sensitive areas, or unique natural resources or features. The land dedicated shall minimize the number of small, fragmented parks in the County.

The County Board shall refuse any proposed park land dedication that fails to meet the above criteria.

E. The County Board may in its discretion, upon recommendation of the Benton County Park Commission accept a per lot cash fee in lieu of land, or accept a combination of cash and land contributions. The fee may be up to 10% of the median undeveloped lot value, as of the date of final plat approval, as determined by the Benton County Assessor.

At the time of final plat approval, the developer shall remit all dedication fees required by the Board of Commissioners and the Director.

At least 75% of the funds obtained by the County pursuant to this section must be used for the acquisition, development or maintenance of parks and trails in the Township or city where collected, unless the township board or city council agrees to allow the County to use the funds outside their township or city in a manner consistent with the County Master Plan for Parks, Trails and Open Space and the Comprehensive Plan. The remaining funds may be used by the County to connect and access parks and trails. The County will report annually to cities and townships where funds were collected and expended in the past year.

Amend Section 10.7.4 Final Plat paragraph (1) to read as follows:

(1) The owners or subdividers shall file five (5) copies of the final plat with the Planning & Zoning Administrator. If this is not done within one year of preliminary plat approval, the preliminary plat shall be considered null and void unless extension was requested as a part of a phased development.

Delete the second paragraph of Section 10.7.4 paragraph (3).

Amend Section 10.8.2 Certifications paragraph (d) the Clerk shall attest the signature of the chair of the Board of County Commissioners.

Amend Section 10.10.2.1B to read as follows:

- A. When applicable, the applicant shall record the appropriate deed restriction, in language approved by the Zoning Administrator prior to the conveyance of any lot, tract or parcel as provided in Sections 10.10.1 A-B.

Amend Section 10.11 Conveyance by Metes and Bounds to read as follows:

Subdivided land parcels greater than or equal to forty (40) acres or one (1) quarter, quarter section in size may be conveyed by metes and bounds property description, provided that the residual parcel is in compliance with the applicable zoning district requirements. However, no land use permit may be issued for any such parcel that has not been surveyed and a certificate of survey or registered land survey been filed in the Office of the County Recorder for those parcels in areas zoned R-1, R-2, R-3, B, B-2, I-1 or I-2.

Amend Section 11.5.2 Procedure paragraph (7) first sentence to read: ...within one year.

Amend Section 11.6 Criteria for Granting Conditional Use Permits to read as follows:

In granting a conditional use permit, the Planning Commission shall consider the effect of the proposed use upon the health, safety, morals, and general welfare of occupants of surrounding lands and water bodies. Among other things, the Planning Commission shall make the following findings where applicable:

- (1) Will the use create an excessive burden on existing parks, schools, streets and other public facilities and utilities which serve or are proposed to serve the area?
- (2) Is the use sufficiently compatible or separated by distance or screening from adjacent agricultural or residentially zoned or used land so that existing homes will not be depreciated in value and there will be no deterrence to development of vacant land?
- (3) Does the structure and site have an appearance that will not have an adverse effect upon adjacent properties?
- (4) Is the use, in the opinion of the Planning Commission, reasonably related to the existing land use?
- (5) Is the use consistent with the purposes of the Development Code and the purposes of the zoning district in which the applicant intends to locate the proposed use?
- (6) Is the use in conflict with the Land Use Plan of the county?

(7) Will the use cause traffic hazards or congestion?

(8) Will the use violate the wetland provisions of Minnesota Statutes Chapter 103G?

Amend Section 11.7.4 to read as follows:

The work for which a land use permit is issued shall commence within one year after the date thereof. The work shall be completed within one year unless an application for an extension has been submitted to and approved by the Zoning Administrator.

Amend Land Use Permits under Section 11.9.2 to read as follows:

Land Use Permits: \$500.00 in addition to double the regular fee as set by separate action of the County Board

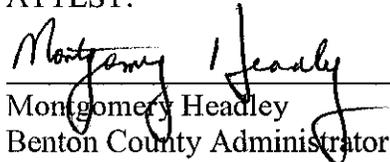
This ordinance shall be effective upon publication.

Approved and adopted by the Benton County Board of Commissioners this 17th day of February in the year of 2004.



Earl M. Bukowski, Chair
Benton County Board of Commissioners

ATTEST:


Montgomery Headley
Benton County Administrator